

Danielle E. Karst (D.C. Bar No. 481881)
Timothy J. Mulreany (Maryland Bar No. 8812160123)
COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
Telephone: (202) 418-6158 (Karst)
Telephone: (202) 418-5306 (Mulreany)
Facsimile: (202) 418-5523
dkarst@cftc.gov
tmulreany@cftc.gov

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DAVID GILBERT SAFFRON
a/k/a DAVID GILBERT and
CIRCLE SOCIETY, CORP.,

Defendants.

Case No. 2:19-cv-1697-JAD-DJA

**DECLARATION OF DANIELLE E.
KARST IN SUPPORT OF APPLICATION
FOR ENTRY OF DEFAULT AGAINST
DEFENDANT CIRCLE SOCIETY, CORP.**

I, Danielle E. Karst, pursuant to 28 U.S.C. § 1746 (2012) hereby declare as follows:

1. I am counsel for Plaintiff, Commodity Futures Trading Commission (“Plaintiff” or “CFTC”) in this action and have personal knowledge of the facts stated herein. I submit this Declaration in support of Plaintiff’s Application for Entry of Default against Defendant Circle Society, Corp (“Circle Society”).

2. On September 30, 2019, Plaintiff, filed a Complaint for Injunctive Relief, Restitution, Disgorgement and Civil Monetary Penalties (“Complaint,” ECF No. 1) against David Gilbert Saffron a/k/a David Gilbert (“Saffron”) and his business entity, Circle Society (collectively, “Defendants”), for violations of the Commodity Exchange Act, 7 U.S.C. §§ 1-27f (2012), and Commission Regulations promulgated thereunder, 17 C.F.R. pts. 1–190 (2019) (ECF

No. 1).

3. Defendant Circle Society is a Nevada corporation, and the Nevada Secretary of State's Articles of Incorporation for Circle Society list P. Sterling Kerr ("Kerr") as the active Registered Agent of Circle Society. *See* Certified Nevada Secretary of State business records for Circle Society and Nevada Secretary of State online listing for Circle Society dated October 9, 2019 (Affidavit of Service, Exhibit 1, ECF No. 14).

4. Counsel for Circle Society's Registered Agent Kerr confirmed to the undersigned in an email dated October 4, 2019, that "Mr. Kerr will accept electronic service by email at the following address: sterling@sterlingkerrlaw.com ." ¹

5. Accordingly, I served Circle Society on October 7, 2019, with the following documents via electronic mail to Circle Society's Registered Agent Kerr (sterling@sterlingkerrlaw.com): (1) Complaint (ECF No. 1); (2) Civil Cover Sheet; (3) Signed Summons (ECF Nos. 4, 10); (4) Motion to Permit Appearance of Government Attorneys (ECF No. 3); (5) Motion and Memorandum to Seal and Proposed Order (ECF No. 2); (6) Motion and Memorandum for *Ex Parte* Statutory Restraining Order and Proposed Order (ECF No. 5); (7) Declaration of CFTC George Malas with Exhibits (ECF Nos. 5-1, 6-1); (8) Motion and

¹ Subsequently, Mr. Kerr's counsel stated that Mr. Kerr had resigned as Registered Agent of Circle Society and provided a copy of Mr. Kerr's Resignation of Registered Agent Form to the CFTC. This Resignation of Registered Agent Form is undated and does not contain any stamp or other proof of filing from the Nevada Secretary of State's Office. Mr. Kerr's counsel stated that, "according to his [Kerr's] staff, this [Kerr's resignation] was sent on 8/20/19." Nevada Revised Statute 77.370 governing resignation of a registered agent provides in relevant part: "A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity." The Nevada Secretary of State's records do not show that Mr. Kerr's resignation has actually been *filed*, irrespective of the date Mr. Kerr's staff "sent" the resignation. Although the CFTC requested additional documentation of Mr. Kerr's resignation from Mr. Kerr's counsel, the CFTC has not received any such documentation as of the date of this filing.

1 Memorandum for Preliminary Injunction and Proposed Order (ECF No. 6); and (9) Sealed Court
2 Order re Motions for Pretrial Equitable Relief and Related Matters (ECF No. 9).

3 6. In addition to my service on Registered Agent Kerr via electronic mail, on
4 October 8, 2019, CFTC paralegal Hillary Van Tassel served the same above-listed documents on
5 Circle Society via United Parcel Service (“UPS”) overnight delivery to Circle Society’s
6 Registered Agent Kerr at 2450 St. Rose Parkway, Suite 120, Henderson, Nevada 89074. *See*
7 Proof of Service on Circle Society and UPS delivery confirmation (Affidavit of Service, Exhibits
8 2-3, ECF No. 14).
9

10 7. Federal Rule of Civil Procedure 12(a)(1)(A)(i) requires a defendant to answer or
11 move against a complaint within 21 days of service. Fed. R. Civ. P. 12(a)(1)(A)(i).

12 8. As Defendant Circle Society in the action was served with the Summons and
13 Complaint on October 7, 2019 (see ECF No. 14), the Defendant’s 21-day period to answer or
14 move against the Complaint expired on October 28, 2019. Fed. R. Civ. P. 12(a)(1)(A)(i).
15

16 9. As of the date of this Declaration, Circle Society has not answered or moved
17 against the Complaint.²

18 I declare under penalty of perjury that the foregoing is true and correct.
19 Executed on November 4, 2019.

20 By: /s/ Danielle E. Karst
21 Danielle E. Karst
22
23
24

25 ² The undersigned advised counsel for Circle Society via email on October 31, 2019, that
26 Circle Society’s Answer was past due and that the CFTC would be filing this motion on this
27 date. Counsel for Circle Society has not responded to the CFTC’s October 31, 2019 email as
28 of the date of this filing.